IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

OP.No. 1090 of 2000(D)

PETITIONER:

P.RAJENDRAN, PAYOOR HOUSE,
KODUMUNDA P.O. PATTAMBI,
PALGHAT DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:
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1. **THE RUBBER BOARD REP.BY ITS SECRETARY, KOTTAYAM.**
2. **THE CHAIRMAN, RUBBER BOARD, KOTTAYAM.**
3. **THE ASSISTANT SECRETARY (E), RUBBER BOARD, KOTTAYAM.**
4. **THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD.**
5. **THE HEADMISTRESS, GOVT. HIGH SCHOOL, PATTAMBI, PALGHAT, DISTRICT.**

BY ADV. SRI.JOSEPH KODIANTHARA - R1 TO R3
BY GOVERNMENT PLEADER SMT.TRESA RANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.1090/2000

ORDER ON CMP. NO.1677/2000 IN OP. NO.1090/2000

DISMISSED

23.10.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

.EXT.P1:- COPY OF THE MEMO DT. 20.2.97 SHOWING THE RELIEF OF THE PETITIONER FROM THE DUTY UNDER THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE RELEVANT PORTION OF THE PENSION RULES OF THE IST RESPONDENT.

EXT.P3:- COPY OF THE REPRESENTATION DT. 16.12.97 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P4:- COPY OF THE LETTER DT. 23.6.98 ISSUED BY THE 3RD RESPONDENT.

EXT.P5:- COPY OF THE OPTION LETTER SUBMITTED BY THE PETITIONER DT. 18.7.98 BEFORE THE 3RD RESPONDENT.

EXT.P6:- COPY OF THE PROCEEDINGS DT. 3RD MARCH 1999 ISSUED BY THE 1ST RESPONDENT TO THE 5TH RESPONDENT.

EXT.P7:- COPY OF THE JUDGMENT DT. 8TH SEPTEMBER 99 PASSED IN OP. NO.20962/99 OF THE HONOURABLE HIGH COURT OF KERALA.

EXT.P8:- COPY OF THE MEMORANDUM DT. 25TH NOVEMBER 99 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P9:- COPY OF THE GOVERNMENT ORDER DT. 31.3.89 NO.369/87/FIN.

EXT.P10:- COPY OF THE CIRCULAR DT. 4.12.99 ISSUED BY THE GOVERNMENT OF KERALA, FINANCE(PENSION-B) DEPARTMENT.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.1090 of 2000-D

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Dated this the 23rd day of October, 2007.

JUDGMENT

1. Petitioner was employed with the first respondent Rubber Board. He voluntarily retired from that service and joined the State Government service on the next day and is now working as a Government servant. At his request, he was permitted to draw the pension due from the Rubber Board directly and that institution has been paying him the pension on account of his voluntary retirement. Later, the Rubber Board took the stand that it was a clerical mistake which resulted in that situation because, the Rubber Board ought to have passed on the pension component derivable by the petitioner, to the State Government

which, in turn, would pay that amount to the petitioner. While the Rubber Board relies on Ext.P9, the petitioner relies on Ext.P10 clarification. Whatever that be, the fact remains that the petitioner opted for direct payment of pension by the Rubber Board to him and the Rubber Board has been doing that. Having attained that status, there is no legal requirement to undo what has already been done. Such a course by compelling the petitioner to pay back what he received as pension and then to collect the amounts from the State Government would only make a red-tape visible rather than working out justice between parties.

2. Under the aforesaid circumstances, Ext.P8 decision is quashed and it is directed that the petitioner will continue to draw the pension due from the Rubber Board directly, while the State Government will not count his earlier service in the Rubber Board for any purposes. Any revision of pension as may be applicable to the employees

of the Rubber Board which would be available to the petitioner as a voluntary pensioner would also be extended to him from time to time, by the Rubber Board, in accordance with law.

The writ petition is disposed of with the aforesaid declarations and directions.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.1090 of 2000-D

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JUDGMENT

Dated: 23rd October, 2007.